



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Implement the
Commission's Procurement Incentive Framework and to
Examine the Integration of Greenhouse Gas Emissions
Standards into Procurement Policies

Rulemaking 06-04-009

**COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY
(U 902 E) AND SOUTHERN CALIFORNIA GAS COMPANY
(U 904 G) ON PROPOSED DECISION**

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January 2, 2007

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**I.
INTRODUCTION AND BACKGROUND**

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission"), San Diego Gas & Electric ("SDG&E") and Southern California Gas Company ("SoCalGas") hereby submit these comments concerning the Phase I Proposed Decision of President Peevey and ALJ Gottstein (the "PD"), issued on December 13, 2006.

The PD adopts an interim greenhouse gas ("GHG") emissions performance standard ("EPS") for new long-term financial commitments to baseload generation undertaken by all load-serving entities ("LSEs"). The proposed EPS is the product of a nine-month effort by the Commission staff and parties to develop a standard to act as a bridge to implementation of a GHG emissions limit. The Commission is to be commended for its dedication to addressing the myriad issues related to implementation of the EPS. As is explained in greater detail below, SDG&E and SoCalGas propose limited revisions to the PD in order to address factual and legal errors, in accordance with Rule 14.3. Specifically, SDG&E and SoCalGas propose that the PD be revised to reflect

the intent of the Legislature that the EPS be set at a level that approximates emissions by *any* Combined-Cycle Gas Turbine (“CCGT”) rather than a *new* CCGT. In addition, SDG&E and SoCalGas recommend that the PD be revised to clarify that the emissions cap adopted in Phase II may or may not be load-based.

II. THE PD SHOULD BE REVISED TO REFLECT THE INTENT OF THE LEGISLATURE CONCERNING THE LEVEL OF THE EPS

SB 1368 directs the Commission to establish a GHG EPS that is “no higher than the rate of emissions of greenhouse gases for combined-cycle natural gas baseload generation.”^{1/} The Final Workshop Report prepared by Commission Staff and several parties to this proceeding recommended adoption of an EPS of 1,100 lbs/MWh, a standard capable of being met by the full range of CCGTs.^{2/} The PD, however, adopts an EPS of 1,000 lbs/MWh, concluding that this standard “represents a level that reflects emissions rates associated with both existing and new baseload CCGT units and . . . avoids establishing a standard that is representative of the most inefficient, older deemed-compliant CCGT powerplants currently in operation.”^{3/} Thus, the PD expressly acknowledges that the 1,000 lbs/MWh standard is lower than the GHG emission rate of some older, less efficient CCGTs.^{4/} The PD asserts that “the Legislature intended to allow the Commission to adopt a standard that some CCGT powerplants would not be capable of meeting,” but fails to provide any support for this claim beyond the speculation that the Legislature included the CCGT grandfather provision because it

^{1/} Senate Bill (SB) 1368, § 8341(d)(1) (Stats. 2006, Ch. 598).

^{2/} See, “Final Workshop Report: Interim Emissions Performance Standard Program Framework, R.06-04-009, June 21-23, 2006” issued October 2, 2006, p. 34.

^{3/} PD, p. 60.

^{4/} *Id.*

intended that the EPS would be set at a level that some CCGTs would be incapable of meeting.^{5/}

In fact, it is clear that the Legislature intentionally refrained from distinguishing between new and older CCGT plants in drafting SB 1368. In considering the measure prior to its adoption, the Legislature noted that “[i]n its 2005 Integrated Energy Policy Report, the CEC recommended setting a GHG standard for utility procurement at a level no higher than emission levels from new combined-cycle natural gas turbines.”^{6/} The Legislature declined to adopt this recommendation, however, and included no language in § 8341(d)(1) referring to new CCGT plants. Rather, the statute references CCGTs as a group, and provides that the standard must be set at a level no higher than the emissions of CCGTs as a group. The Commission has recognized that in construing statutory provisions, “[i]f the language is unambiguous, then the language controls and the inquiry is over.”^{7/} Here, the plain language of the statute makes clear that the Legislature intended that the EPS be set at a level that would approximate the emissions of CCGTs as a group. This legislative intent becomes even more apparent when the grandfather provision is taken into account – the notion that, in the absence of the grandfather provision, a CCGT could fail a standard that is ostensibly *based* upon the emissions of a CCGT defies logic. Plainly, the grandfather provision is intended to reflect the upfront determination that *all* CCGT plants permitted for operation as of June 30, 2007 are guaranteed to pass the EPS. Accordingly, the PD should be revised to include an EPS of

^{5/} See, *id.*, p. 58, p. 60.

^{6/} See, SB 1368 Bill Analysis, http://info.sen.ca.gov/pub/05-06/bill/sen/sb_1351-1400/sb_1368_cfa_20060830_190221_sen_floor.html, p. 6 (emphasis added).

^{7/} D.04-04-020, 2004 Cal. PUC LEXIS 137, pp. *6-7.

1,100 lbs/MWh, a level that accurately reflects the emissions of the current full range of CCGTs.

**III.
THE PD SHOULD BE REVISED TO CLARIFY THAT THE EPS WILL BE
REEVALUATED WHEN AN ENFORCEABLE GHG EMISSION LIMIT IS
ESTABLISHED AND IN OPERATION**

In addition to the modification described above, SDG&E and SoCalGas recommend that the PD be revised in order to clarify an area of potential confusion. The PD states that SB 1368 requires the Commission to reevaluate the EPS “when an **enforceable load-based GHG emissions limit** is established and in operation.”^{8/} SB 1368, however, provides merely that “[t]he commission . . . shall reevaluate and continue, modify, or replace the greenhouse gases emission performance standard when an **enforceable greenhouse gases emissions limit** is established and in operation . . .”^{9/} The statute does not require that this emission limit be load-based and, indeed, it is not clear that the California Air Resources Board (“CARB”), the agency charged under AB 32 with developing GHG emission reduction regulations, will elect to implement a load-based cap.^{10/} Accordingly, the PD should be revised to reflect the fact that the enforceable greenhouse gases emissions limit ultimately adopted may or may not be load-based.

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^{8/} PD, Finding of Fact No. 8 (emphasis added); *see, also*, PD, p.2.

^{9/} Senate Bill (SB) 1368, § 8341 (g) (Stats. 2006, Ch. 598) (emphasis added).

^{10/} *See*, Assembly Bill (AB) 32, § 38510 (Stats. 2006, Ch. 488).

IV. CONCLUSION

For the reasons set forth herein, the PD should be revised to incorporate the modifications detailed above.

Respectfully submitted this 2nd day of January, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the forgoing **COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) AND SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) ON PROPOSED DECISION** on each party named in the official service list for proceeding R.06-04-009 by electronic mail to the parties for whom an electronic address has been provided and by also mailing a properly addressed copy by first-class mail with postage prepaid. A copy was mailed to Commissioner Michael R. Peevey and ALJs Charlotte TerKeurst, Jonathan Lakritz and Meg Gottstein via FedEx.

Executed this 2nd day of January, 2007 at San Diego, California.

/s/ Deanna M. Porter
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CALIFORNIA PUBLIC UTILITIES COMMISSION

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